

IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, MUMBAI

BEFORE ABY T VARKEY, JM
AND
SHRI PRASHANT MAHARISHI, AM

ITA No. 2431, 2432 & 2433 / MUM/2023
(Assessment Year 2014-15, 2015-16 and 2016-17)

The Deputy Commissioner of
Income Tax (Exemption)
-1(1) Room No 607, Cumballa
Hill MTNL Bld,
Mumbai

American Education Trust
31, Laxmi Bhavan, sarswati
Colony, santacruz (w)
Mumbai-400054

(Appellant)

(Respondent)

PAN No. AAATA4303N

Assessee by : Shri Satish Modi AR

Revenue by : Shri Manoj Kumar Mishra SR DR

Date of hearing: 27.10.2023

Date of pronouncement : 40.10.2023

ORDER

PER BENCH:

01. ITA number 2431/MUM/2023 is filed by The Deputy Commissioner Of Income Tax, Exemption – 1 (1), Mumbai (The Learned AO) for assessment year 2014 – – 15 dated 12/5/2023 wherein the appeal filed by the assessee against the assessment order under section 143 (3 of the income tax act, 1961 (the act) dated 26/12/2016 passed by the AO was allowed.
02. ITA number 2432/M/2023 is filed by the learned assessing officer for assessment year 2015 – 16 against the appellate order passed by the learned CIT – A wherein the appeal filed by the assessee against the

assessment order under section 143 (3) passed by the learned assessing officer on 27/12/2017 was allowed.

03. The learned assessing officer files ITA number 2433/M/2023 for assessment year 2016 – 17 wherein the appeal filed by the assessee against the assessment order dated 23/12/2018 by the assessee was allowed by appellate order dated 12/05/2023.
04. Facts as collected from the assessment year 2014 – 15 we found that assessee is a charitable organization registered under section 12 A of the act as per registration dated 8/4/1994. It filed its return of income on 24/9/2014 at rupees Nil. As assessee is registered under section 12 A it claimed exemption under section 11 of the act. The case was selected for scrutiny.
05. During the course of assessment proceedings, the learned assessing officer found that assessee trust is running a school by the name of Swami Vivekananda International School at Kandivili Mumbai having a class of 12th standard. During the course of assessment proceedings for assessment year, 2013 – 14 it was found that a springboard education private limited is a company having the same directors as the trustees of the assessee trust. That company used to transport all the students of the assessee trust also and has earned substantial income. Therefore the learned assessing officer for that assessment year held that the provisions of section 13 of the income tax act are violated accordingly for this year the learned assessing officer noted that that company has received the bus fees of ₹ 59,148,418/- and receipt from the activity of pre-preliminary school is only ₹ 47,760,550 in the hands of that company. Therefore, it was held that the school buses are not entirely utilized for transportation of pre-preliminary school but are also utilized for the students of the assessee trust, which is a property of the trust. Accordingly, the learned assessing officer held that that company has been allowed to provide a bus service to the students of the assessee trust school whereby the company has earned substantial income, which would otherwise have accrued to the assessee trust at a far lower investment than the receipt thereof. And accordingly he reached at a conclusion that the benefits due to utilization of the property of the trust has and the order to the trustees and relatives by way of profits in the company and other direct and indirect benefit like

remuneration/interest on loans given to concerns in which the directors/family members are major shareholders. Thus, the bus fee from students could have endured to the benefit of the trust with a nominal investment, which presently flowed to the company. Therefore, there is a violation of provisions of section 13 of the act. Accordingly, the assessee trust was denied the benefit of section 11 and total income of the assessee trust was computed at ₹ 30,158,806 by passing an assessment order on 26/12/2016.

06. Aggrieved, assessee preferred an appeal before the learned CIT – A. As per paragraph, number 5 of his order holding that act does not prohibit the transaction between the specified persons and the charitable trusts. The transactions are allowed, provided that the payment of the goods and services are equivalent to their market value and not excessive so as not to pass any undue benefit to the specified persons. He further held that section 13 (1) © of the act do not restrict any commercial transaction even with the specified person if such transaction at arm’s-length and no benefit is passed on. He referred to several judicial precedents. He further held that it is for the assessing officer to factually establish that the provisions of section 13 apply in this case. As there is only a contractual relationship with the company of the trust and there is no sufficient ground for invoking provisions of section 13 of the act as the services provided by that company to the assessee trust is at market rate, he allowed the appeal of the assessee by granting benefit of section 11 of the act.
07. Therefore, now the learned assessing officer is in appeal. He reiterated the findings of the learned assessing officer.
08. The learned authorized representative submitted that assessee trust has been denied benefit of section 11 only because of the reason of assessment in a by 2013 – 14. He submitted that assessment year 2013 – 14 travelled to ITAT and ITA number 971/M/2017 was decided on 5/2/2018 wherein on identical facts and circumstances in paragraph number 7, additional evidences were admitted in the form of valuation report. After admission of the valuation report the coordinate bench set-aside the order of the learned and CIT – A and restore the matter back to the file of the learned assessing officer to pass a fresh order after examining the valuation report and other relevant documents. Assessee is directed to file the relevant documents

and evidence before the assessing officer. He further stated that after the examination, the learned assessing officer passed the order on 26/12/2019 placed at page number 23 – 26 of the paper book. As per paragraph number 5 of that order the learned assessing officer has noted that assessee has furnished the details in respect of the property letter to that particular company along with the valuation report of approved value, copies of comparable cases in the same locality and also transaction details of change of tenancy from erstwhile tenant so as to justify the fair rent of the property. During the course of set-aside, assessment proceedings the details furnished and evidence of the approved value were examined and after considering such evidences, the assessee's contention was accepted. In addition, assessee was granted benefit of section 11 of the act. He submitted that there is no change in the facts and circumstances of the case and therefore there is no infirmity in the order of the learned CIT – A.

09. We have carefully considered the rival contention and perused the orders of the lower authorities. In the present case the provisions of section 13 are invoked for the reason that assessee has given a transportation contract to a private limited company where the directors of that company are also trustee in the company. In assessment year 2013 – 14 the learned assessing officer denied the exemption under section 11 of the act to the assessee, which travelled up to the coordinate bench and the matter, was set-aside to the file of the learned assessing officer. On examination of the details furnished by the assessee, the learned AO was satisfied in assessment year 2013 – 14 and accepted the contention of the assessee. There is no denial from either side that there is no change in the facts and circumstances of the case. In view of this, as the claim of the assessee has been accepted in earlier years by the assessing officer, we do not find any reason to upset the order of the learned CIT – A. There is not a single word uttered that for this year also the valuation report is required to be obtained and to be examined by the learned assessing officer by the learned departmental representative. Therefore, we do not have any hesitation in accepting the contention of the assessee and the order of the learned CIT – A. Accordingly we do not find any merit in the appeal of learned AO. Accordingly, all the grounds of the appeal of the AO are dismissed.

10. In the result, appeal filed by the learned assessing officer is dismissed.
11. As the facts for the assessment year 2015 – 16 and 2016 – 17 are identical, for the reasons given by us in deciding the appeal of the learned assessing officer for assessment year 2014 – 15, we also dismissed the appeal of the learned assessing officer for these two years.
12. In the result all the three appeals filed by the learned AO are dismissed.

Order pronounced in the open court on 30.10.2023.

Sd/-

(ABY T VARKEY)
(JUDICIAL MEMBER)

Sd/-

(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated:30.10 .2023

Dragon

Copy of the Order forwarded to:

BY ORDER,

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai